

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.12 and 2009 Iowa Code Supplement section 237A.4A, the Department of Human Services amends Chapter 109, "Child Care Centers," Iowa Administrative Code.

These amendments:

- Implement regulatory fees for issuing child care center licenses;
- Set fees for Department processing of criminal and child abuse record checks;
- Require national criminal history checks based on fingerprints for all persons subject to record checks due to involvement in child care at a licensed center;
- Require centers to have a policy to handle incidents of biting;
- Require that center volunteers be at least 16 years old; and
- Clarify policy on interim permission for a new facility to open without a license and for training requirements for center directors.

Implementation of regulatory fees based on a child care center's capacity is required by Iowa Code Supplement section 237A.4A(1). Under these amendments, fee amounts range from \$50 for a center with the capacity to care for up to 20 children to \$150 for a center with the capacity to care for more than 150 children. Fees are payable before a full or provisional license is issued (every two years). Due to the required determination of capacity, the Department will notify each center of the amount of the fee and the due date. Fees will be in effect for relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010.

Iowa Code Supplement section 237A.5(2) requires national criminal history checks through the Federal Bureau of Investigation and specifies that the Department shall not be responsible for the cost of these record checks. This requirement shall be phased in as centers are licensed or relicensed beginning June 1, 2010. Centers are responsible for obtaining and submitting fingerprints of staff and others who are required to have record checks. A person who has passed state record checks may begin involvement with child care pending the response to the national criminal history check.

Although the amendments set a fee for state record checks made through the Department, it is anticipated that most facilities will conduct record checks directly through the state's "single contact repository" (SING). The single contact repository allows facilities electronic access to criminal and abuse registry information through one contact, instead of requiring separate requests to each agency. To use SING, centers will need to set up business accounts with the Department of Public Safety. In order to reduce duplicate expenses for national criminal history checks when a person moves to another facility, the rules provide that one child care center may forward specified information about these checks to another center upon request.

The amendments clarify that the Department's standard procedure is to issue Form 470-4690, Permission to Open Without a License, to a new center when compliance with administrative requirements is established and then to complete other aspects of the licensing inspection process after the center begins operation.

The amendments also clarify that training requirements for all center directors are the same as for full-time staff, regardless of whether the director is considered full-time or part-time.

The requirement for a policy about biting is intended to promote better outcomes when biting occurs, since biting often leads to children being injured and to child abuse assessments.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8118B**. The Department received written comments on the Notice of Intended Action from 35 people, and 31 people attended the public hearing held to receive comments on the proposed amendments. Comments focused on the financial burden for the centers to support the cost of the record checks and the effect this added cost would have on center programs, the usefulness

and need for fingerprinting for national checks and the negative effect this requirement would have on hiring and use of volunteers, and the prohibition on paying licensing fees by check.

In response to these comments, the Department has made changes to the amendments as published under Notice of Intended Action to:

- Allow payments to be submitted by check and provide that payment by a check that is denied for insufficient funds is grounds for revocation or suspension of the license.
- Shorten the period for the payment of licensing fees from 30 state working days after the issuance of the fee notice to 30 calendar days for more specificity.
- Add more detailed information on the requirements for a center's policy on biting.
- Add a requirement for the center to have a policy to ensure that people do not have unauthorized access to children at the center. This requirement reinforces the center's responsibility for ensuring that children are not exposed to people who may pose a risk of harm to them. Only persons who are subject to a record check and who have been cleared for involvement with child care may be directly responsible for child care or have access to a child when the child is alone.
- Clarify who is subject to a record check by defining "direct responsibility for child care" and revising the definition of "unrestricted access." Exemptions to record checks are granted for parents, guardians, and custodians in relation to their own children. Volunteers will not need to have record checks unless they are responsible for child care for a child other than their own child or will have access to other children when they are alone.
- Allow exemptions to record checks for professionals licensed by the Educational Examiners Board who are delivering professional services within the center consistent with law and rules governing their license. In order to obtain licensure, these professionals must undergo a background check that includes a check of the Iowa criminal, sex offender, and child abuse registries and a fingerprint-based check of the FBI criminal database.
- Allow centers 30 days after a person is cleared through the state record check process to submit fingerprints for the national record check. This change allows centers to avoid the expense of a national record check for people who do not start work or who leave soon after being hired.
- Allow centers to request a waiver of the state and national record check procedures for student interns when record checks have been performed by the educational institution.
- Allow centers to request a waiver of the national record check process for center staff who have had national record checks to comply with federal regulations.
- Clarify that centers must have submitted fingerprints for all of their staff before their next relicensure after June 1, 2010, but allow an extra month to obtain fingerprints for centers whose licenses are renewed on June 1, 2010.
- Clarify what type of access to children is permitted and restricted in a center and add amendments to subrule 109.10(16) to reflect provisions of Iowa Code chapter 692A enacted in 2009 Iowa Acts, chapter 119. Under this legislation, a sex offender with a sex offense against a minor shall not be present upon the property of a child care center without the written permission of the center director, except for the time reasonably necessary to transport the offender's own minor child or ward to and from the center. Persons with a sex offense against a minor are also prohibited from operating, managing, being employed by, or acting as a contractor or volunteer at a child care center.

These amendments provide for waivers in specified situations related to records checks, upon written request by the center and upon approval of the Department. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, the Department does not have authority to waive statutory provisions.

The Council on Human Services adopted these amendments on March 10, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement sections 237A.4A and 237A.5.

These amendments shall become effective on June 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Unrestricted access,” as follows:

*“Unrestricted access”* means that a person has contact with a child alone; ~~has access in providing care, education, guidance, or discipline to a child; or has access to the facility beyond the passage area and room in which the person’s child is in~~ is directly responsible for child care.

ITEM 2. Adopt the following **new** definitions of “Direct responsibility for child care” and “Regulatory fee” in rule **441—109.1(237A)**:

*“Direct responsibility for child care”* means being charged with the care, supervision, or guidance of a child.

*“Regulatory fee”* means the amount payable to the department for licensure of a child care center based on the capacity of the center.

ITEM 3. Amend paragraphs **109.2(1)“c”** and **“d”** as follows:

c. When a center makes a sufficient application for an initial ~~or renewal~~ license, it may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

(1) to (4) No change.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued Form 470-4690, Permission to Open Without a License, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of Form 470-4690.

(2) No full or provisional license shall be issued before payment of the applicable regulatory fee as determined pursuant to subrule 109.2(7).

ITEM 4. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing full compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the due date, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 5. Adopt the following **new** paragraph **109.2(4)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department’s division of fiscal management by the due date indicated on Form 470-4834, Child Care Center Licensing Fee Invoice.

ITEM 6. Adopt the following **new** paragraph **109.2(5)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not paid in full due to insufficient funds to cover a check submitted to the department for the fee.

ITEM 7. Adopt the following **new** subrule 109.2(7):

**109.2(7) Regulatory fees.** For relicensures with an effective date on or after August 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after June 1, 2010, a fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. *Fee structure.* The amount of the fee is based on the capacity of the center as indicated below:

<u>Center Capacity</u>	<u>Fee Amount</u>
0 to 20 children	\$50
21 to 50 children	\$75
51 to 100 children	\$100
101 to 150 children	\$125
151 or more children	\$150

*b. Determination of capacity.* The licensing consultant shall determine center capacity by dividing the amount of usable space by the amount of space required per child, as specified in subrule 109.11(1) and subparagraphs 109.11(3) “a”(2) and (3). Upon approval by the department, the final determination of center capacity may include evaluation of other factors that influence capacity, as long as physical space requirements per child as defined in subrule 109.11(1) and subparagraphs 109.11(3) “a”(2) and (3) are maintained.

*c. Notification.* Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide Form 470-4834, Child Care Center Licensing Fee Invoice, to the center.

*d. Payment.* The center shall return Form 470-4834 to the department with the licensing fee payment within 30 calendar days from the date of the licensing consultant’s or designee’s signature on Form 470-4834. Payment may be in the form of cash, check, money order, or cashier’s check.

- (1) Payment must be received before the department will issue a full or provisional license.
- (2) Regulatory fees are nonrefundable and nontransferrable.

ITEM 8. Adopt the following new paragraphs **109.4(2)“g”** and **“h”**:

*g.* Develop and implement a policy for responding to incidents of biting that includes the following elements.

- (1) An explanation of the center’s perspective on biting.
- (2) A description of how the center will respond to individual biting incidents and episodes of ongoing biting.
- (3) A description of how the center will assess the adequacy of caregiver supervision and the context and the environment in which the biting occurred.
- (4) A description of how the center will respond to the individual child or caregiver who was bitten.
- (5) A description of the process for notification of parents of children involved in the incident.
- (6) A description of how the incident will be documented.
- (7) A description of how confidentiality will be protected.
- (8) A description of first-aid procedures that the center will use in response to biting incidents.

*h.* Develop a policy to ensure that people do not have unauthorized access to children at the center. The policy shall be subject to review for minimum safety standards by the licensing consultant. The policy shall include but is not limited to the following:

- (1) The center’s criteria for allowing people to be on the property of the facility when children are present.
- (2) A description of how center staff will supervise and monitor people who are permitted on the property of the center when children are present, but who have not been cleared for involvement with child care through the formal record check process as outlined in subrule 109.6(6). The description shall include definitions of “supervision” and “monitoring.”
- (3) A description of how responsibility for supervision and monitoring of people in the center will be delegated to center staff, which includes provisions that address conflicts of interest.
- (4) A description of how the policy will be shared with parents, guardians, and custodians of all children who are enrolled at the center.

ITEM 9. Amend subrule 109.6(5) as follows:

**109.6(5) *Volunteers and substitutes.*** A volunteer shall be at least 16 years of age. All volunteers and substitutes shall:

a. ~~All volunteers and substitutes shall sign~~ Sign a statement indicating whether or not they have one of the following:

(1) A conviction of any law in any state or any record of founded child abuse or dependent adult abuse in any state.

(2) A communicable disease or other health concern that could pose a threat to the health, safety, or well-being of the children.

b. ~~The center shall have the volunteer or substitute:~~ Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.

(1) ~~Complete Form 595-1396, DHS Criminal History Record Check, Form B.~~

(2) ~~Complete Form 470-0643, Request for Child Abuse Information.~~

(3) ~~Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.~~

c. Undergo the record check process when the person is responsible for child care for a child other than the person's own child or has access to other children when they are alone. Records of the record check process shall be maintained as required in subparagraph 109.9(1) "b."

ITEM 10. Amend subrule 109.6(6) as follows:

**109.6(6) *Record checks.*** The department shall conduct criminal and child abuse record checks in Iowa for each owner, director, staff member, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states.

a. *Applicability.*

(1) Criminal and child abuse record checks shall be conducted for:

1. Each owner, director, staff member, substitute, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone;

2. Anyone living in the child care facility who is 14 years of age or older.

(2) Parents, guardians, and custodians are exempt from the record check process in relation to access to their own children or wards.

(3) Professional staff who hold a current, valid license issued by the educational examiners board are exempt from the record check process in relation to children in the center to whom they provide professional services consistent with Iowa Code chapter 272 and rules adopted by the educational examiners board.

b. *Authorization.* The person subject to record checks shall complete Form 595-1396, DHS Criminal History Record Check Form B, and any other forms required by the department of public safety to authorize the release of records.

c. *Iowa records checks.* Checks and evaluations of Iowa child abuse and criminal records, including the sex offender registry, shall be completed before the person's involvement with child care at the center. Iowa records checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any possible transgressions. The department is not responsible for the cost of conducting the Iowa records check.

(1) The child care center may access the single-contact repository (SING) as necessary to conduct a criminal and child abuse record check of the person in Iowa. If the results of the check indicate a potential transgression, the center shall send a copy of the results to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. When the department conducts the records check, the fee shall be \$25 for each record check through June 30, 2010, and \$35 effective July 1, 2010. The center shall submit the fee before the department initiates the record check process. Payment must be in the form of cash, check, money order, or cashier's check. The department may access SING to conduct the records check. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa for a person who is subject to a record check.

(3) Centers that participate in student intern programs may seek a waiver for substitution of the state record check process with a check performed by the student's educational institution. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

d. National criminal history checks. National criminal history checks based on fingerprints are required for all persons subject to record checks under this subrule effective with a center's initial licensure or relicensure on or after June 1, 2010. The national criminal history check shall be repeated for each person every four years and when the department or center becomes aware of any new transgressions committed by that person in another state. The department is not responsible for the cost of conducting the national criminal history check.

(1) The child care center is responsible for obtaining the fingerprints of all persons subject to record checks. Fingerprints may be taken by law enforcement agencies, by agencies or companies that specialize in taking fingerprints, or by center staff or subcontractors who have received appropriate training in the taking of fingerprints.

(2) If the results of the Iowa records checks do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the national criminal history check and evaluation have been completed.

(3) The child care center shall provide fingerprints to the department of public safety no later than 30 days after the subject's approval for employment at the center. The center shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(4) Centers that are required to submit fingerprint-based checks of the FBI national criminal database to comply with federal regulations may seek a waiver to substitute that record check for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(5) Centers that participate in student intern programs may seek a waiver to substitute the fingerprint-based check of the FBI national criminal database performed by the student's educational institution for the procedure required in this subrule. Requests for a waiver shall be submitted on Form 470-4893, Record Check Waiver, to the address listed on the form.

(6) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center may provide the following information in writing upon a center's request, using Form 470-4896, National Criminal History Check Confirmation:

1. Date of most recent national criminal history check conducted by the center on the person in question, and

2. Whether or not the national check process resulted in clearance of the person for involvement with child care.

(7) If the results of the national criminal history check indicate that the person has committed a transgression, the center, if interested in continuing the person's involvement in child care, shall send a copy of the results to the department for evaluation. The department shall determine whether or not the person may be involved with child care.

(8) A center shall submit all required fingerprints to the department of public safety before the issuance or renewal of the center's license on or after June 1, 2010. EXCEPTION: Centers that have an initial or renewal licensure date of June 1, 2010, shall have until July 1, 2010, to submit the fingerprints to the department of public safety.

~~a. e.~~ *Mandatory prohibition.* A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) to (6) No change.

~~b. f.~~ *Mandatory time-limited prohibition.*

(1) No change.

(2) After the five-year prohibition period ~~from the date of the conviction or the founded abuse report as defined in subparagraph 109.6(6) "b"(1)~~ imposed pursuant to 109.6(6) "~~f~~"(1), the person may request the department to perform an evaluation under paragraph ~~109.6(6) "e"~~ 109.6(6) "~~g~~" to determine whether prohibition of the person's involvement with child care continues to be warranted.

~~e. g.~~ *Evaluation required.* For all other transgressions, and as requested under subparagraph ~~109.6(6) "b"(2)~~ 109.6(6) "~~f~~"(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) to (3) No change.

~~d. h.~~ *Evaluation decision.* Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) to (4) No change.

~~e. i.~~ *Notice to parents.* The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse ~~record against~~ committed by an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

~~f. Repeat of record checks.~~ The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.

ITEM 11. Amend subrule 109.7(2) as follows:

**109.7(2) *Staff Center directors and staff employed 20 hours or more per week.*** The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

*a.* During their first year of employment, all center directors and all staff employed 20 hours or more per week shall receive the following training:

(1) to (6) No change.

*b.* Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:

(1) to (3) No change.

ITEM 12. Amend subrule 109.9(1) as follows:

**109.9(1) *Personnel records.*** The center shall maintain personnel information sufficient to ensure that persons employed in the center meet minimum staff and training requirements and do not pose any threat to the health, safety, or well-being of the children. Each employee's file shall contain, at a minimum, the following:

*a.* A statement signed by each individual indicating whether or not the individual has any conviction ~~by~~ of violating any law ~~of~~ in any state or ~~if the individual~~ has any record of founded child abuse or dependent adult abuse in any state.

*b.* Copies of all records checks kept in accordance with state and federal law regarding confidentiality of records checks. These records shall include:

(1) A copy of Form 595-1396, DHS Criminal History Record Check; Form B, or any other permission form approved by the department of public safety for conducting an Iowa or national

criminal history record check. ~~The center shall complete the form and forward it to the department before the start of employment.~~

~~e. (2) A copy of Form 470-0643, Request for Child Abuse Information, when applicable.~~

~~(3) Copies of the results of Iowa records checks conducted through the SING for review by the department upon request.~~

~~(4) Copies of national criminal history check results.~~

~~(5) Any department-issued documents sent to the center related to a records check, regardless of findings.~~

~~c. Reserved.~~

~~d. to f. No change.~~

ITEM 13. Amend subrule 109.10(16) as follows:

**109.10(16) *Supervision and access.***

a. The center director and on-site supervisor shall ensure that each staff member, substitute, or volunteer knows the number and names of children assigned to that staff member, substitute, or volunteer for care. Assigned staff, substitutes, and volunteers shall provide careful supervision.

b. Any person in the center who is not an owner, staff member, substitute, or volunteer who has a record check and department approval to be involved with child care shall not have unrestricted access to children for whom that person is not the parent, guardian, or custodian.

c. Persons who are exempt from the record check process are granted access in accordance with 109.6(6) "a"(2) unless the provisions of paragraph 109.10(16) "d" apply.

d. A sex offender who has been convicted of a sex offense against a minor and who is required to register with the Iowa sex offender registry under the provisions contained in Iowa Code chapter 692A shall not operate, manage, be employed by, or act as a contractor or volunteer at a child care center. The sex offender also shall not be present upon the property of a child care center without the written permission of the center director, except for the time reasonably necessary to transport the offender's own minor child or ward to and from the center.

(1) Written permission shall include the conditions under which the sex offender may be present, including:

1. The precise location in the center where the sex offender may be present;

2. The reason for the sex offender's presence at the facility;

3. The duration of the sex offender's presence;

4. Description of the supervision that the center staff will provide the sex offender to ensure that no child is alone with the sex offender.

(2) Before giving written permission, the center director shall consult with the center licensing consultant. The written permission shall be signed and dated by the center director and the sex offender and kept on file for review by the center licensing consultant.

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